

Assembly Bill No. 2390

Passed the Assembly August 14, 2006

Chief Clerk of the Assembly

Passed the Senate August 10, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 321.6, 1731, 1756, 1768, and 1769 of, to add Section 384.2 to, and to repeal Sections 316 and 321.7 of, the Public Utilities Code, and to repeal Section 13 of Chapter 856 of the Statutes of 1996, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2390, Committee on Utilities and Commerce. Public Utilities Commission: reporting requirements: rehearings and judicial review.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Under the Public Utilities Act, the commission requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected, in part, to support cost-effective energy efficiency and conservation activities.

This bill would require the commission to report to the Legislature by July 15, 2009, and triennially thereafter, on the energy efficiency and conservation programs overseen by the commission, as specified. This bill would also recast various requirements that the commission prepare and submit a specified account, work plan, and report at various times to require the plan, accounting, and report to be submitted annually to the Governor and the Legislature no later than February 1 of each year, as specified.

(2) Existing law, after any order or decision has been made by the Public Utilities Commission, authorizes any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, to apply for a rehearing with respect to any matter determined in the action or proceeding and specified in the application for rehearing. Existing law prohibits a cause of action arising out of any order or decision of the commission from accruing in a court

to a corporation or person unless the corporation or person has filed an application to the commission for a rehearing within a specified amount of time after the date of issuance of an order or decision. Existing law defines date of issuance, for the purposes of these provisions, to mean the date on which the commission mails the order or decision to the parties to the action or proceeding.

This bill would require the commission to notify the parties of the issuance of an order or decision by either mail or, with the consent of an affected party, by electronic transmission, as specified. The bill would revise the definition of “date of issuance” to mean the mailing or electronic transmission date that is stamped on the official version of the order or decision.

(3) Existing law generally authorizes an aggrieved party to petition for a writ of review of an order or decision of the commission within 30 days after the commission issues its decision denying an application for a rehearing, or, if the commission grants the application, within 30 days after the commission issues its decision on rehearing. Existing law specifies that the issuance of a decision or the granting of an application, for the purposes of these provisions, is to be construed to have occurred on the date on which the commission mails the decision or the granting of the application to the parties to the action or proceeding. Existing law requires the petition for review to be served on the executive director of the commission.

This bill would specify that the issuance of a decision or the granting of an application is to be construed to have occurred on the date of issuance, as defined, for the purposes of these provisions and certain other provisions setting forth judicial review procedures for specified orders or decisions of the commission. The bill, in addition, would require the petition for review to be served on the general counsel of the commission.

The people of the State of California do enact as follows:

SECTION 1. Section 384.2 is added to the Public Utilities Code, to read:

384.2. The commission shall submit a report to the Legislature by July 15, 2009, and triennially thereafter, on the energy efficiency and conservation programs it oversees. The

report shall include information regarding authorized utility budgets and expenditures and projected and actual energy savings over the program cycle.

SEC. 2. Section 1 of this act supersedes the reporting requirements of Section 2 of Item 8660-001-0462 of the Supplemental Report of the 1999 Budget Act.

SEC. 3. Section 316 of the Public Utilities Code is repealed.

SEC. 4. Section 321.6 of the Public Utilities Code is amended to read:

321.6. The commission shall do all of the following:

(a) Develop, publish, and annually update an annual work plan that describes in clear detail the scheduled ratemaking proceedings and other decisions that may be considered by the commission during the calendar year. The plan shall include, but is not limited to, information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided. The plan shall also include information on the operation of the office of the public advisor and identify the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided. The plan shall also include a statement that specifies activities that the commission proposes to reduce the costs of, and rates for, energy, including electricity, and for improving the competitive opportunities for state agriculture and other rural energy consumers. The commission shall post the plan under the Official Documents area of its Internet Web site and shall develop a program to disseminate the information in the plan utilizing computer mailing lists to provide regular updates on the information to those members of the public and organizations which request that information.

(b) Produce a complete accounting of its transactions and proceedings for the preceding year, together with other facts, suggestions, and recommendations that it deems of value to the people of the state and a statement that specifies the activities and achievements of the commission in reducing the costs of, and rates for, energy, including electricity, for state agriculture and other rural energy consumers.

(c) Create a report on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings.

(d) Submit annually the plan, accounting, and report required by subdivisions (a), (b), and (c) to the Governor and Legislature no later than February 1 of each year.

SEC. 5. Section 321.7 of the Public Utilities Code is repealed.

SEC. 6. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) (1) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property.

(2) The commission shall notify the parties of the issuance of an order or decision by either mail or electronic transmission. Notification of the parties may be accomplished by one of the following methods:

(A) Mailing the order or decision to the parties to the action or proceeding.

(B) If a party to an action or proceeding consents in advance to receive notice of any order or decision related to the action or proceeding by electronic mail address, notification of the party may be accomplished by transmitting an electronic copy of the

official version of the order or decision to the party if the party has provided an electronic mail address to the commission.

(C) If a party to an action or proceeding consents in advance to receive notice of any order or decision related to the action or proceeding by electronic mail address, notification of the party may be accomplished by transmitting a link to an Internet Web site where the official version of the order or decision is readily available to the party if the party has provided an electronic mail address to the commission.

(3) For the purposes of this article, “date of issuance” means the mailing or electronic transmission date that is stamped on the official version of the order or decision

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the department’s revenue requirements, or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the Department of Water Resources, the expedited review of order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division, shall accrue in any court to any corporation or person unless the corporation or person has filed an application with the commission for a rehearing within 10 days after the date of issuance of the order or decision. The Department of Water Resources shall notify the commission of any determination pursuant to paragraph (2) of this subdivision prior to the issuance by the commission of any order or decision construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session. The commission shall issue its decision and order on rehearing within 20 days after the filing of the application.

SEC. 7. Section 1756 of the Public Utilities Code is amended to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director and the general counsel of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date of issuance, as defined in paragraph (4) of subdivision (b) of Section 1731.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

(f) For purposes of this section, review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.

(g) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one

million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

SEC. 8. Section 1768 of the Public Utilities Code is amended to read:

1768. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session that (1) relates to the determination or implementation of the revenue requirements of the Department of Water Resources or the establishment or implementation of bond or power charges necessary to recover those revenue requirements, or (2) in the sole determination of the department, the expedited review of an order or decision of the commission is necessary or desirable, for the maintenance of any credit ratings on any bonds or notes of the department issued pursuant to Division 27 (commencing with Section 80000) of the Water Code or for the department to meet its obligations with respect to any bonds or notes pursuant to that division:

(a) Within 30 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 30 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director and the general counsel of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred

on the date of issuance, as defined in paragraph (4) of subdivision (b) of Section 1731.

(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

SEC. 9. Section 1769 of the Public Utilities Code is amended to read:

1769. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4:

(a) Within 10 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 10 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director and the general counsel of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date of issuance, as defined in paragraph (4) of subdivision (b) of Section 1731.

(d) The Legislature hereby declares that if a writ issues in an action under this section, delay in the determination of the writ will delay implementation of a securitized financing, thereby diminishing approximately \$1 billion of total savings to Pacific Gas and Electric Company's ratepayers that might be achieved if a securitized financing were implemented immediately. Therefore, to maximize ratepayer benefits, review under this section should be expedited.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 10. Section 13 of Chapter 856 of the Statutes of 1996 is repealed.

Approved _____, 2006

Governor